IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 30452 of 2006(A)

OA.271/2003 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

THE KARNATAKA BANKA LTD.,
ERNAKULAM BRANCH, XXX/512, CHELUR BUILDING,
M.G.ROAD, ERNAKULAM, KOCHI-682 016,
REP. BY ITS SENIOR BRANCH MANAGER,
SRI.NARASIMHAN T.A., AGED 42 YEARS,
SON OF T.S.ANANTHA RAMAKRISHNAN.

BY ADV. SRI.P.SHRIHARI
SMT.P.VANI

RESPONDENTS:
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1. M/S.SUI PAK,
"SUI CENTRE", XIII/2,
MOULANA AZAD ROAD, COCHIN-2.

2. M/S.UNIVERSAL TRADERS CORPORATION (UTC),
"SUI CENTRE", XIII/2,
MOULANA AZAD ROAD, COCHIN-2.

3. M/S.FANCI FOODS,
"SUI CENTRE", XII/2,
MOULANA AZAD ROAD, COCHIN-2.

4. MR.SADIQ ABDULLA,
S/O.A.R.ADBULLA, VII/2010,
MOULANA AZAD ROAD, COCHIN-2.

5. MR.ABBAS ABDULLA,
S/O.A.R.ABDULLA, VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

6. MR.TARIQ ABDULLA,
S/O.A.R.ABDULLA, VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

7. MR.SHUAIB YOUSUFF,
S/O.A.R.M.ABDULLA, VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

8. MR.SAQUIB ABDULLA,
S/O.A.R.ABDULLA, VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

9. MR.SAJID KASSIM,
S/O.A.R.M.KASSIM, VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

10. MR.TABREZ YACOOB,
S/O.A.R.MOHAMMED YACOOB,
IST FLOOR, FLAT NO.14, CENTURY TERRACE,
YUVAJANA SAMAJAM ROAD, KADAVANTHRA,
COCHIN-682 020.

11. MR.A.S.M.SAMEER,
S/O.A.R.ABDUL SHAKOOR,
VIII/2010 A, MOULANA AZAD ROAD, COCHIN-2.

12. MR.A.R.ABDULLA,
S/O.LATE ABDUL RAHIMAN SAIT,
VIII/2010,
MOULANA AZAD ROAD, COCHIN-2.

13. MR.A.R.M.KASSIM,
S/O.LATE ABDUL RAHIMAN SAIT, VIII/2011,
MOULANA AZAD ROAD, COCHIN-2.

14. MR.A.R.HUSSAIN,
S/O.ABDUL RAHIMAN SAIT, 3-A,
SURYAKANTHI APARTMENTS, CHITTOOR ROAD,
COCHIN-11.

15. MR.A.R.M.YOUSUF,
S/O.LATE ABDUL RAHIMAN SAIT,
VIII/2011 A,
MOULANA AZAD ROAD, COCHIN-2.

16. MR.A.R.M.YACOOB,
S/O.LATE ABDUL RAHIMAN SAIT, IST FLOOR,
FLAT NO.14, CENTURY TERRACE,
YUVAJANA SAMAJAM ROAD,
KADAVANTHRA, COCHIN.

17. MR.A.R.ABDUL SHAKOOR,
S/O.LATE ABDUL RAHIMAN SAIT,
VII/2010 A,
MOULANA AZAD ROAD, COCHIN-2.

18. MS.SAJIDA BANU,
W/O.A.R.ABDULLA, VIII/2010 A,
MOULANA AZAD ROAD, COCHIN-2.

19. MS.SAFIA BAI, W/O.A.R.ABDUL SHAKOOR,
XIII/2010 A,
MOULANA AZAD ROAD, COCHIN-2.

20. MS.NEELUFER KASSIM,
W/O.A.R.M.KASSIM, VIII/2011,
MOULANA AZAD ROAD, COCHIN-2.

21. RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL,
KSHB BUILDING, PANAMPILLY NAGAR,
ERNAKULAM.

22. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, COLLECTORATE,
KAKKANAD, ERNAKULAM.

23. SPECIAL TAHSILDAR (R.R.) I,
FORT KOCHI, ERNAKULAM DISTRICT - I.

24. VILLAGE OFFICER,
MATTANCHERRY VILLAGE,
ERNAKULAM DISTRICT.

25. VILLAGE OFFICER,
KUMBALANGI VILLAGE,
ERNAKULAM DISTRICT.

*26. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.

(*IMPLEADED AS ADDITIONAL 26TH RESPONDENT AS PER ORDER IN IA 16159/2006 DATED 20/11/2006.)

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB
SRI.V.VENUGOPALAN NAIR – FOR R16
SRI.C.UNNIKRISHNAN (KOLLAM)
SHRI.K.P.PRADEEP, GOVERNMENT PLEADER
SHRI.P.P.THAJUDEEN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER DATED 16/04/2004 PASSED BY THE DRT, ERNAKULAM IN OA NO.271/2003.

P2 : COPY OF ORDER DATED 12/03/2004 PASSED BY THE DRT, ERNAKULAM IN OA NO.277/2003.

P3 : COPY OF THE ORDER DATED 18/06/2004 PASSED BY THE DRT, ERNAKULAM IN OA NO.276/2003.

P4 : COPY OF THE I.A. NO. 1369/2006 IN DRC.1549/KB/EKM WITH ANNEXURE FILED BEFORE 21ST RESPONDENT.

P5 : COPY OF THE I.A.NO.1367/2006 IN DRC.1483/KB/EKM WITH ANNEXURE FILED BEFORE 21ST RESPONDENT.

P6 : COPY OF THE I.A.NO.1368/2006 IN DRC.1624/KB/EKM WITH ANNEXURE FILED BEFORE 21ST RESPONDENT.

P7 : COPY OF ORDER DATED 15/09/2006 IN IA NO.1369/2006 IN DRC.1549/KB/EKM PASSED BY 21ST RESPONDENT.

P8 : COPY OF ORDER DATED 15/09/2006 IN IA NO.1367/2006 IN DRC.1483/KB/EKM PASSED BY 21ST RESPONDENT.

P9 : COPY OF ORDER DATED 15/09/2006 IN IA NO.1368/2006 IN DRC.1624/KB/EKM PASSED BY 21ST RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 30452 of 2006

Dated, this the 4th day of December, 2007

J U D G M E N T

Petitioner obtained decrees for an amount of around Rs.20 crores from the Debt Recovery Tribunal for recovery of arrears due from respondents 1 to 3, which are partnership firms, of which respondents 4 to 20 are either partners or guarantors. Respondents 1 to 3 - Firms availed various loans against mortgage of properties from the petitioner Bank. Respondents 4 to 11 are stated to be partners of 1st respondent firm. Similarly, respondents 13, 15, 16, 17 & 18 are stated to be partners of 2nd respondent firm. So far as 3rd respondent firm is concerned, respondents 12, 14, 19 & 20 are stated to be the partners. Learned counsel for the petitioner submits that respondents 4 to 20 are personal guarantors for the loan availed by respondents 1 to 3. In other words, the decrees passed by the DRT are executable against respondents 1 to 20 who are jointly and severally liable for the respective loans. Pursuant to the decrees passed by the DRT, recovery certificates are stated to be issued by the DRT to enable the Recovery Officer to take over and sell the mortgaged properties of the defaulters. However, when location sketch was applied for, the District

Collector declined the same stating that there are State dues.

2. Learned Government Pleader appearing for respondents 22 to 25 submitted that arrears due are towards KSEB arrears and sales tax arrears. It is also reported that the properties of 3rd respondent firm are under attachment by the Central Income Tax Department for recovery of an amount of around Rs.35 lakhs. Besides this, it is stated that an amount of Rs.1 lakh is due towards Employees Provident Fund contribution.

3. Even though, notices were sent to all the respondents, registry has stated that notice to respondents 1 to 3 and 10 could not be served because they left India. I do not know how partnership firms can leave India and the Post Office can return the notices with such an endorsement. Obviously, partners are not traceable in the addresses of the Firms and that could be the only reason, why notices are returned stating that they left India.

4. Learned counsel appearing for respondents 16 & 19 stated that the decrees passed are ex parte and they are taking steps against the same and according to him, recovery authorities have no authority to sell the properties. Learned standing counsel for additional 26th respondent KSEB submits that debt due to KSEB

has priority. Even though notices could not be served on respondents 1 to 3 - Firms, which are principal debtors, in view of the service of notices and appearance of respondents 16 & 19, I feel, the interest of defaulted firms, whose partners and guarantors these persons are, is represented in Court. Therefore, I proceed to dispose of this writ petition.

5. This Court on 19/06/2007 directed to sell the properties of defaulters by 23rd respondent only because debts are due to State as well as to the Bank and the petitioner Bank did not have any objection against sale of properties by the recovery authorities for recovery of debts over which State has priority over Bank dues. It is today reported in Court that even though there is offer of above Rs.2.50 crores, the bidder is being scared by hired gundas engaged by respondents. So 2nd highest bidder is being contacted for sale of the property. If revenue sale cannot take place in a peaceful atmosphere and gundas can resist it successfully, it is a reflection of the incompetence of the recovery authorities and this Court can only condemn it. It is the duty of the District Collector to ensure that revenue sale takes place without any hindrance and if required to use police force. Therefore, there will be direction to

the 22st respondent to grant adequate police protection to the 23rd respondent for sale of the property to the highest bidder. It is open to the 23rd respondent to get back highest bidder and offer the property to him with the police assistance to be given by 22nd respondent.

6. So far as petitioner's claim for location certificate is concerned, I do not think the recovery authority can decline the same for the properties over which there is no attachment by State, which has priority over Bank debts. 23rd respondent is therefore directed to consider the various recovery proceedings initiated against respondents 1 to 20, and wherever State does not have priority over the Bank dues, to issue location certificate to the Bank without delay.

7. So far as objections raised by respondents 16 & 19 are concerned, I do not think this Court can consider the claims because any objection raised in the course of recovery can be considered by the recovery authority under Section 46 of RR Act, and it is the duty of the 23rd respondent to consider any claim made by respondents 16 & 19 or any other respondents herein. Similarly, if claim is rejected respondents have statutory remedy

under the RR Act by way of appeal / revision. This writ petition is therefore, disposed of with direction to the 23rd respondent to immediately proceed with sale of properties and confirmation of sale wherever sale was taken place for recovery of arrears due to the State, wherever such arrears have priority over Bank dues. So far as the properties over which Government has no priority over Bank dues, there will be direction to him to issue location certificate to the petitioner, in terms of the request, within a period of two weeks from the date of production of a copy of this judgment.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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